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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/696,817

Filing Date: October 30, 2003

Appellant(s): LE, HIEN K.

Travis W. Thomas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/17/2008 appealing from the Office action (Advisory) mailed 12/13/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have bearing on the board's decision in the pending appeal:

Based on the information supplied by the Appellants, and to the best of Appellants' legal representative's knowledge, the real party in the interest is the assignee, BearingPoint, Inc.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2006/0235732	MILLER ET AL.	Dec. 9 th 2002 (filing date)
		Oct. 19 th 2006 (Publication date)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 2006/0235732 to Miller et al. (hereinafter, Miller).

Per claim 1:

Miller discloses:

A system facilitating software engineering and management in connection with a software development project according to a process that is compliant with a qualitatively measurable standard, comprising:
a server system operable to communicate with a plurality of client systems (See Fig. 11B and related discussion); a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects (paragraph [0311] "...the navigator 1460 may forward the name of the document, the project of interest, and server storing the document. In response, one of the ASPs 1420 accesses the database engine 1430 to locate the desired template..."), the resources comprising at least: first resources specifying a plurality of tasks to be performed within the process (paragraph [0040] "FIG. 2A, the organization then continues the process...planning and organizing the SEPG...by organizing the SEPG project resources... task is performed iteratively as needed to organize" and paragraph [0045] "Work packages are generally described in the CMM criteria and generally relate to the tasks and functions given to the various workers in a project") and specifying for each task one or more of: a description of the task (paragraph [0092] "Step 320 involves coordinating the tasks associated with defining a strategy for the organization");

a description of how the task relates to the standard (paragraph [0093] “The first task in step 320, as illustrated in FIG. 3C, is to identify an organization strategy”); one or more activities to be performed for the task (paragraph [0040] “These tasks are performed in view of each project's requirements”); which personnel should perform the activities for the task (paragraph [0044] “An organization performs this step 225 to orient and train team members, to coach and evaluate team members, and to manage the physical resources assigned to the project”); one or more deliverables to be generated for the task (paragraph [0045] “tasks and functions given to the various workers in a project... project team then performs the work needed to develop the required deliverable good”); one or more expected artifacts according to which the process will be measured against the standard (paragraph [0062] “During the meeting, the SEPG liaisons and project managers should review the matrix and determine which items have been met and those that would require additional information or documentation (artifacts”); and an expected time to complete the task (paragraph [0039] “determine a timeline for the estimate”); and second resources comprising one or more templates (paragraph [0251] “the organization selects the relevant authoring and development tools and to define standards, templates, and development procedures”), each template operable to be customized in generating one or more deliverables for one or more tasks (paragraph

[0049] "Any acceptance of final deliverables takes place in connection with completing the program");

the server system operable to, at one or more times during a software development project:

receive from a user associated with a client system a request for one or more resources (paragraph [0115] "As the program determines its resource needs, the Program Resource Request is completed to obtain the resources");

retrieve the requested resources from the database (paragraph [0115] "the Program Resource Request is completed to obtain the resources"); and

provide the requested resources to the user in connection with the software development project (paragraph [0115] "the organization may generally analyze resource requirements, initiate the procurement of goods and services, obtain human and physical resources from participating entities, assign these resources to projects, and release the resources upon project completion").

Per claim 2:

The rejection of claim 1 is incorporated and further, Miller disclose:

The system of claim 1, wherein the standard comprises one or more maturity levels (paragraph [0015] "the present invention provides a method for producing a more mature product"), each maturity level comprising a plurality of key practice areas, each key practice area comprising a plurality of goals, each goal comprising a plurality of key practices (paragraph [0006] "The SW-CMM model defines five capability levels and

identifies Key Process Areas (KPAs). The CMMI model replaces the KPAs with Process Areas (PAs). The lower levels of the CMMI and the related PAs focus mainly on management processes and industry minimal standards. Higher CMMI levels and the related PAs generally focus more on organizational and technical processes. The higher levels and their PAs also strive for "industry-best" practice").

Per claim 3:

The rejection of claim 2 is incorporated and further, Miller disclose:

The system of claim 2, wherein the standard comprises the Software Engineering Institute's Software Capability Maturity Model (SEI/SW-CMM) (paragraph [0003] "The Capability Maturity Model.RTM. (CMM.RTM.) may refer specifically to the Capability Maturity Model for Software (SW-CMM) or, more generally, to a number of other process improvement models developed by the Software Engineering Institute (SEI) and registered to Carnegie Mellon University. The SW-CMM was the first model developed by the SEI...").

Per claim 4:

The rejection of claim 2 is incorporated and further, Miller discloses:

The system of claim 2, wherein the description of how the task relates to the standard comprises an identification of one or more maturity levels, key practice areas, goals, and key practices to which the task relates (paragraph [0006] "The SW-CMM model defines five capability levels and identifies Key Process Areas (KPAs). The CMMI model

replaces the KPAs with Process Areas (PAs). The lower levels of the CMMI and the related PAs focus mainly on management processes and industry minimal standards. Higher CMMI levels and the related PAs generally focus more on organizational and technical processes. The higher levels and their PAs also strive for "industry-best" practice").

Per claim 5:

The rejection of claim 1 is incorporated and further, Miller discloses:

The system of claim 1, wherein each template comprises one of: a standard template generic to a plurality of software development projects within an enterprise (paragraph [0251] "the organization selects the relevant authoring and development tools and to define standards, templates, and development procedures"); and a deliverable generated in connection with a previous software development project (paragraph [0049] "Any acceptance of final deliverables takes place in connection with completing the program").

Per claim 6:

The rejection of claim 1 is incorporated and further, Miller discloses:

The system of claim 1, wherein the server system is further operable to, at one or more times during a software development project: receive a deliverable generated in connection with the software development project (paragraph [0049] "Any acceptance of final deliverables takes place in connection with completing the program"); store at least

a portion of the deliverable in the database (paragraph [0286] “file storage device 1220 contains files 1222 that store data relating to one or more steps in Method 10 (FIG. 1”); and make the stored portion of the deliverable accessible to the client systems for use (paragraph [0286] “when performing a step in Method 10, a user may select a file 1222 corresponding to that step”), with or without customization, in connection with subsequent software development projects (paragraph [0286] “the file may direct the user to undertake certain quality control actions during the development of a software application”).

Claims 7-12 are the method claim corresponding to system claims 1-7, respectively, and rejected under the same rational set forth in connection with the rejection of claims 1-7, respectively, above.

Claims 13-18 are the computer product claim corresponding to system claims 1-7, respectively, and rejected under the same rational set forth in connection with the rejection of claims 1-7, respectively, above.

Claim 20 is the system claim corresponding to system claims 1-7 and rejected under the same rational set forth in connection with the rejection of claims 1-7, above.

(10) Response to Argument

Arguments (pages 23-27)

Appellant argued that:

To reject independent Claim 1, the Examiner asserts either the database containing information on an organization and its suppliers or the multiple repository system in *Miller* can properly be considered **a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects**, as independent Claim 1 recites. Appellant disagrees with the Examiner.

Even assuming for the sake of argument the database in *Miller* containing information on an organization and its suppliers or the multiple repository system in *Miller* could properly be considered **a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects**, *Miller* would still fail to disclose, teach, or suggest that the database in *Miller*, the multiple repository system in *Miller*, or a combination of the two contains, as independent Claim 1 specifically recites, **first resources specifying a plurality of tasks to be performed within the process and specifying for each task one or more of:**

- a description of the task;
- a description of how the task relates to the standard;
- one or more activities to be performed for the task;
- which personnel should perform the activities for the task;
- one or more deliverables to be generated for the task;
- one or more expected artifacts according to which the process will be measured against the standard; and
- an expected time to complete the task.

The database in *Miller* merely contains information on an organization and its suppliers. Moreover, the multiple repository system in *Miller* merely contains stored templates users can access to compose documents through the stored templates. (Figures I IA-11-B and 14; Paragraph 0280 and 0310-0311). Nowhere does *Miller* disclose, teach, or suggest that either or both contain each and every one of the **first resources** that independent Claim 1 specifically recites.

In the Office Action sent 13 September 2007, the Examiner identifies various steps of a Software Engineering Process Group (SEPG) project execution process in *Miller* and asserts these steps are contents of the multiple repository system in *Miller* that can properly be considered **first resources**. Appellant again disagrees with the Examiner. Even assuming for the sake of argument these steps in *Miller* could properly be considered as **specifying for each task--which is not at all clear--Miller** would still fail to disclose, teach, or suggest that the multiple repository system in *Miller* contains any of those steps.

In the Advisory Action sent 13 December 2007, the Examiner asserts the multiple repository accelerated process improvement framework (APIF) system in *Miller* can properly be considered **a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects**. Appellant again disagrees with the Examiner. As the Examiner points out, the APIF system in *Miller* distributes documents needed for a CMM method, including instructions for implementing the CMM method and documentation to evidence actions taken in the CMM method. Even so, *Miller* still fails to disclose, teach, or suggest that these instructions and documentation can properly be considered each and every one of the **first resources** that independent Claim 1 specifically recites.

Examiner's response:

In response to Appellants arguments, Miller discloses a method and related system for assisting and expediting an organization's transformation toward higher levels of the Capability Maturity Model (CMM) or other derivative maturity models. In particular, Miller provides a method for producing a more mature product. Miller's method comprises managing an organization developing the product, whereby the organizational management comprises managing personnel of the organization and implementing a product improvement process. Miller's method comprises managing a project for developing the product and managing the delivery of the product. Actions undertaken during the organizational management affects implementation of the project and delivery managements, and the actions undertaken during the project and delivery managements likewise affect implementation of the organizational management (paragraph [0015]).

Miller discloses multiple respository system, as argued by the Appellants, which allows user to access the data stored through a server, paragraph [0299] "multiple repository APIF system 1400 distributes the documents needed for the Method 10. As described above, these documents include, for example, instructions for implementing the Method 10 and documentation to evidence actions taken in the Method 10. The multiple repository APIF system 1400 has a navigator application 1460 (described in greater detail below) that allows a user on the client-side to access documentation and data from multiple data repositories 1440 through a server 1410. The data repositories 1440 may have different formats and protocols and may be located at different locations" and paragraph [0301] "The server 1410 further includes a database engine

1410. The database engine is well-known technology for organizing, locating, and accessing data contained in the data repositories 1440. Examples of the database engine include Oracle.RTM., SQL Server.RTM., and Access.RTM.". Further, Miller discloses the resources specifying tasks to be performed, See paragraph [0040] "FIG. 2A, the organization then continues the process... planning and organizing the SEPG...by organizing the SEPG project resources... task is performed iteratively as needed to organize" and paragraph [0045] "Work packages are generally described in the CMM criteria and generally relate to the tasks and functions given to the various workers in a project". Furthermore, the claimed language (first resource specifying... task one or more of) requiring at a minimum of just one from the list, however, Examiner has considered all of them from the list and mapped with Miller references (see below and the rejection above).

Miller explicitly discloses the features as claimed i.e., a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects (See **FIG. 14 and paragraph [0311]** "...the navigator 1460 may forward the name of the document, the project of interest, and server storing the document. In response, one of the ASPs 1420 accesses the database engine 1430 to locate the desired template..."), the resources comprising at least:

first resources specifying a plurality of tasks to be performed within the process (**paragraph [0040]** "**FIG. 2A, the organization then continues the process... planning and organizing the SEPG...by organizing the SEPG project resources...**

task is performed iteratively as needed to organize” and paragraph [0045] “Work packages are generally described in the CMM criteria and generally relate to the tasks and functions given to the various workers in a project”) and specifying for each task one or more of:

a description of the task (***paragraph [0092] “Step 320 involves coordinating the tasks associated with defining a strategy for the organization”***);

a description of how the task relates to the standard (***paragraph [0093] “The first task in step 320, as illustrated in FIG. 3C, is to identify an organization strategy”***);

one or more activities to be performed for the task (***paragraph [0040] “These tasks are performed in view of each project's requirements”***);

which personnel should perform the activities for the task (***paragraph [0044] “An organization performs this step 225 to orient and train team members, to coach and evaluate team members, and to manage the physical resources assigned to the project”***);

one or more deliverables to be generated for the task (***paragraph [0045] “tasks and functions given to the various workers in a project... project team then performs the work needed to develop the required deliverable good”***);

one or more expected artifacts according to which the process will be measured against the standard (***paragraph [0062] “During the meeting, the SEPG liaisons and project managers should review the matrix and determine which items have been***

met and those that would require additional information or documentation (artifacts)); and

an expected time to complete the task (*paragraph [0039]* “**determine a timeline for the estimate**”).

In addition, even assuming for the sake of argument that the Miller reference did not disclose a single item associated with ***first resources***, Miller reference still anticipates because each of these tasks merely recites non-functional description material that does not patentably distinguish the claims from Miller reference. This is nothing more than the instruction conveys to the user which is clearly non-functional descriptive material.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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